

1 THE HONORABLE RICARDO S. MARTINEZ

2 THE HONORABLE THERESA L. FRICKE

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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 UTHERVERSE GAMING LLC,

12 Plaintiff,

13 v.

14 EPIC GAMES, INC.,

15 Defendant.

Case No. 2:21-cv-00799-RSM-TLF

**DECLARATION OF BETHANY D.
BENGFORT IN SUPPORT OF
DEFENDANT EPIC GAMES, INC.'S
MOTION TO STAY PENDING *EX
PARTE* REEXAMINATION**

1 I, Bethany D. Bengfort, hereby declare as follows:

2 1. I am an attorney at the law firm of Morrison & Foerster LLP, counsel for
3 Defendant Epic Games, Inc. (“Epic”). I have personal knowledge of each fact stated in this
4 declaration, to which I could and would competently testify if called as a witness.

5 2. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts of a document
6 titled “ex parte reexamination historical statistics” found on the United States Patent and
7 Trademark Office (“PTO”) website on October 3, 2023 at the following URL:
8 <https://www.uspto.gov/learning-and-resources/statistics/reexamination-information>

9 3. Attached hereto as **Exhibit 2** is a true and correct copy of invalidity contentions
10 served by Epic to counsel for Plaintiff Utherverse Gaming, LLC (“Utherverse”) on December 1,
11 2021.

12 4. Attached hereto as **Exhibit 3** is a true and correct copy of the *ex parte*
13 reexamination request of U.S. Patent No. 8,276,071 filed by Epic with the PTO on March 14,
14 2023.

15 5. Attached hereto as **Exhibit 4** is a true and correct copy of an information
16 disclosure statement (“IDS”) filed by Utherverse with the PTO in U.S. Patent Application No.
17 17/339,872 on December 10, 2021. Utherverse filed identical IDS in U.S. Patent Application
18 Nos. 17/339, 873 and 17/339,874.

19 6. Attached hereto as **Exhibit 5** is a true and correct copy of an Office Action by the
20 PTO issuing a final rejection of claims in U.S. Patent Application No. 17/339,872 on September
21 21, 2022.

22 7. Attached hereto as **Exhibit 6** is a true and correct copy of an Office Action by the
23 PTO issuing a final rejection of claims in U.S. Patent Application No. 17/339,873 on September
24 20, 2022.

25 8. Attached hereto as **Exhibit 7** is a true and correct copy of an Office Action by the
26 PTO issuing a final rejection of claims in U.S. Patent Application No. 17/339,874 on September
27 19, 2022.

9. Attached hereto as **Exhibit 8** is a true and correct copy of a letter to Utherverse's counsel Mark T. Deming from me dated November 1, 2022.

10. Attached hereto as **Exhibit 9** is a true and correct copy of e-mail exchanges between counsel for Epic (myself and Mattheaus Martino-Weinhardt) and counsel for Utherverse (Colby Springer) dating from December 1, 2022 to February 14, 2023.

11. Attached hereto as **Exhibit 10** is a true and correct copy of the Order Granting Request for Ex Parte Reexamination of U.S. Patent No. 8,276,071 issued by the PTO in Reexamination Control No. 90/015,212 on April 20, 2023.

12. Attached hereto as **Exhibit 11** is a true and correct copy of an Office Action by the PTO issuing a rejection of claims 1-8, 10, 12-15, 20, and 23-25 of U.S. Patent No. 8,276,071 in Reexamination Control No. 90/015,212 on September 18, 2023.

13. Attached hereto as **Exhibit 12** is a true and correct copy of excerpts from the Expert Report of Benjamin Ellinger dated April 14, 2023.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on October 20, 2023 in San Francisco, California.

/s/ *Bethany D. Bengfort*

Bethany D. Bengfort

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